

AMENDED IN SENATE APRIL 29, 2003  
AMENDED IN SENATE APRIL 21, 2003  
AMENDED IN SENATE MARCH 25, 2003

**SENATE BILL**

**No. 163**

**Introduced by Senator Alarcon**

February 11, 2003

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An act to add Sections 31000.10 and 37103.1 to the Government Code, relating to personal services contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Alarcon. Service contracts: counties and cities.

Existing law requires public entities to comply with certain procedures in soliciting and awarding public contracts. Existing law also authorizes public entities, under limited circumstances, to enter into a contract for the provision of services.

This bill would authorize a county or city, other than a chartered county or city, to enter into a contract for services with a private entity, if the contract would achieve cost savings and if any of the following conditions are satisfied: (1) the contract would be for new functions that the Legislature mandates or authorizes be performed by independent contractors, (2) the services would not be available within the county or city or cannot be satisfactorily performed by district employees, (3) the services would be incidental to a purchase or lease contract, (4) the policy, administrative, or legal goals and purposes of the county or city could not be accomplished through the regular or ordinary hiring process, (5) the work would meet criteria for emergency appointment, (6) equipment, materials, facilities, or support services would be

provided that could not feasibly be provided by the district, and (7) the services would be of an urgent, temporary, or occasional nature.

The bill would ~~operate prospectively and would not apply to any existing contracts for services~~ *apply to contracts entered into after July 1, 2005.*

This bill would not apply to specified contracts for public transit, architectural, engineering, land surveying, and construction projects services.

This bill would, in the event a contract for transit services is not renewed because of the enactment of this section and if the county or city performs those transit services, require the county or city to offer employment, on a preferential basis as specified, to those former ~~employee~~ *employees* of the former contractor that performed those transit services. This bill would also require those former employees of the prior transit contractor that were represented by an exclusive bargaining representative, to be placed in an appropriate local bargaining unit. If there is not an appropriate local bargaining unit, this bill would require the county or city, as applicable, to continue bargaining with the exclusive bargaining representative of the former employees of the prior transit contractor hired by the county or city.

This bill would require a county, city, or city and county to adopt new practices with respect to contracting for services, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Section 31000.10 is added to the Government Code, to read:

31000.10. (a) Notwithstanding any other provision of this division, contracting for all services currently or customarily performed by county employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The county board of supervisors or the county clearly demonstrates that the proposed contract will result in actual overall cost savings to that county, provided that:

(A) In comparing costs, there shall be included the county's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there may not be included the county's indirect overhead costs, unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the county. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing county costs that would be directly associated with the contracted function. These continuing county costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work may not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut county pay rates.

(3) The contract does not cause the displacement of county employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within

1 the same classification and general location or employment with  
2 the contractor, so long as wages and benefits are comparable to  
3 those paid by the county.

4 (4) The savings shall be large enough to ensure that they will  
5 not be eliminated by private sector and county cost fluctuations  
6 that could normally be expected during the contracting period.

7 (5) The amount of savings clearly justifies the size and duration  
8 of the contracting agreement.

9 (6) The contract is awarded through a publicized, competitive  
10 procurement process.

11 (7) The contract includes specific provisions pertaining to the  
12 qualifications of the staff that will perform the work under the  
13 contract, as well as assurances that the contractor's hiring practices  
14 meet applicable nondiscrimination standards.

15 (8) The potential for future economic risk to the county from  
16 potential contractor rate increases is minimal.

17 (9) The contract is with a firm. A "firm" means a private entity  
18 that is a corporation, limited liability corporation, partnership,  
19 nonprofit organization, or sole proprietorship.

20 (10) The potential economic advantage of contracting is not  
21 outweighed by the public's interest in having a particular function  
22 performed directly by the county.

23 (b) (1) *Any documents, including, but not limited to, cost*  
24 *analyses, prepared by, or on behalf of, a county for the purpose of*  
25 *complying with subdivision (a) shall be subject to the same level*  
26 *of confidentiality that applies to proposals or bids of potential*  
27 *contractors.*

28 (2) *Potential contractors may not be given access to documents*  
29 *prepared by or on behalf of the county for the purpose of complying*  
30 *with subdivision (a) prior to the time that bids, statements of*  
31 *qualifications, or proposals, as applicable, are required to be*  
32 *submitted to the county in accordance with the requirements for*  
33 *competitive selection.*

34 (c) Notwithstanding any other provision of this chapter,  
35 contracting for services shall also be permissible when any of the  
36 following conditions can be met:

37 (1) The contract is for new county functions and the Legislature  
38 has specifically mandated or authorized the performance of the  
39 work by independent contractors.



1 (2) The services are not available within the county workforce,  
2 cannot be performed satisfactorily by county employees, or are of  
3 such a highly specialized or technical nature that the necessary  
4 expert knowledge, experience, and ability are not available  
5 through the county workforce.

6 (3) The services are incidental to a contract for the purchase or  
7 lease of real or personal property. Contracts under this criterion,  
8 known as “service agreements,” shall include, but not be limited  
9 to, agreements to service or maintain office equipment or  
10 computers that are leased or rented.

11 (4) The policy, administrative, or legal goals and purposes of  
12 the county cannot be accomplished through the utilization of  
13 persons selected pursuant to the regular or ordinary county hiring  
14 process. Contracts are permissible under this criterion to protect  
15 against a conflict of interest or to ensure independent and unbiased  
16 findings in cases where there is a clear need for a different, outside  
17 perspective. These contracts shall include, but not be limited to,  
18 obtaining expert witnesses in litigation.

19 (5) The nature of the work is such that the criteria for  
20 emergency appointments apply. “Emergency appointment”  
21 means an appointment made for a period not to exceed 60 working  
22 days either during an actual emergency to prevent the stoppage of  
23 public business or because of the limited duration of the work. The  
24 method of selection and the qualification standards for an  
25 emergency employee shall be determined by the county. The  
26 frequency of appointment, length of employment, and the  
27 circumstances appropriate for the appointment of firms or  
28 individuals under emergency appointments shall be restricted so  
29 as to prevent the use of emergency appointments to circumvent the  
30 regular or ordinary hiring process.

31 (6) The contractor will provide equipment, materials, facilities,  
32 or support services that could not feasibly be provided by the  
33 county in the location where the services are to be performed.

34 (7) The services are of such an urgent, temporary, or occasional  
35 nature that the delay incumbent in their implementation under the  
36 county’s regular or ordinary hiring process would frustrate their  
37 very purpose.

38 ~~(e)~~

1 (d) (1) Except as provided in paragraph (2), this section shall  
2 apply to all counties, including counties that have adopted a merit  
3 or civil service system.

4 (2) This section does not apply to a charter county formed  
5 pursuant to Section 3 of Article XI of the California Constitution.

6 ~~(d)~~

7 (e) (1) This section does not apply to any contract for services  
8 described in Section 4525 or Section 4529.10.

9 (2) This section does not apply to a contract for public transit  
10 services, including paratransit services, in which the county is the  
11 grantee or subgrantee of Federal Transit Administration assistance  
12 and the county is thereby subject to the guidelines established in  
13 FTA Circular 4220 1D or any subsequent guidelines or revisions  
14 issued by the Federal Transit Administration.

15 ~~(e)~~

16 (f) Notwithstanding any other provision of law, if any contract  
17 for transit services is not renewed because of the standards set forth  
18 in this section, and if the county commences to perform transit  
19 services that were provided by the former contractor, all of the  
20 following apply:

21 (1) The county shall offer employment, on a preferential basis,  
22 to any qualified former employee of the former contractor to  
23 perform the same job functions as performed on behalf of the  
24 former contractor.

25 (2) If, at any time, the county determines that fewer employees  
26 are required to perform the transit services than the number of  
27 employees that were required to perform those services under the  
28 former contract, the county shall offer preferential employment to  
29 the employees of the former contractor based on seniority.

30 (3) (A) If the employees of the former contractor were  
31 represented by an exclusive bargaining representative and if transit  
32 services, or services similar to the transit services performed by the  
33 former contractor, are also performed by employees of the county,  
34 the employees of the former contractor shall be placed in the  
35 appropriate county bargaining unit.

36 (B) In the event there is not an appropriate county bargaining  
37 unit for the employees of the former contractor, the county shall  
38 recognize and bargain with the exclusive representative of the  
39 employees of the former contractor.

40 ~~(f)~~

(g) This section shall apply to contracts for services entered into after ~~January 1, 2004~~, *July 1, 2005*. This section does not apply to the renewal of contracts for services subsequent to ~~January 1, 2004~~, *July 1, 2005*, where the contract was entered into before ~~January 1, 2004~~, *July 1, 2005*, irrespective of whether the contract is renewed, modified, or rebid with the existing contractor or with a new contractor.

SEC. 2. Section 37103.1 is added to the Government Code, to read:

37103.1. (a) Notwithstanding any other provision of this chapter, contracting for all services currently or customarily performed by city employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The legislative body clearly demonstrates that the proposed contract will result in actual overall cost savings to that city, provided that:

(A) In comparing costs, there shall be included the city's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there may not be included the city's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the city. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing city costs that would be directly associated with the contracted function. These continuing city costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work may not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut city pay rates.



(3) The contract does not cause the displacement of city employees. The term “displacement” includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the city.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and city cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justifies the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive procurement process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurances that the contractor’s hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the city from potential contractor rate increases is minimal.

(9) The contract is with a firm. A “firm” means a private entity that is a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public’s interest in having a particular function performed directly by the city.

*(b) (1) Any documents, including, but not limited to, cost analyses, prepared by, or on behalf of, a city for the purpose of complying with subdivision (a) shall be subject to the same level of confidentiality that applies to proposals or bids of potential contractors.*

*(2) Potential contractors may not be given access to documents prepared by or on behalf of the city for the purpose of complying with subdivision (a) prior to the time that bids, statements of qualifications, or proposals, as applicable, are required to be submitted to the city in accordance with the requirements for competitive selection.*



1 (c) Notwithstanding any other provision of this chapter,  
2 contracting for services shall also be permissible when any of the  
3 following conditions can be met:

4 (1) The contract is for new city functions and the Legislature  
5 has specifically mandated or authorized the performance of the  
6 work by independent contractors.

7 (2) The services are not available within the city workforce,  
8 cannot be performed satisfactorily by city employees, or are of  
9 such a highly specialized or technical nature that the necessary  
10 expert knowledge, experience, and ability are not available  
11 through the city workforce.

12 (3) The services are incidental to a contract for the purchase or  
13 lease of real or personal property. Contracts under this criterion,  
14 known as “service agreements,” shall include, but not be limited  
15 to, agreements to service or maintain office equipment or  
16 computers that are leased or rented.

17 (4) The policy, administrative, or legal goals and purposes of  
18 the city cannot be accomplished through the utilization of persons  
19 selected pursuant to the regular or ordinary city hiring process.  
20 Contracts are permissible under this criterion to protect against a  
21 conflict of interest or to ensure independent and unbiased findings  
22 in cases where there is a clear need for a different, outside  
23 perspective. These contracts shall include, but not be limited to,  
24 obtaining expert witnesses in litigation.

25 (5) The nature of the work is such that the criteria for  
26 emergency appointments apply. “Emergency appointment”  
27 means an appointment made for a period not to exceed 60 working  
28 days either during an actual emergency to prevent the stoppage of  
29 public business or because of the limited duration of the work. The  
30 method of selection and the qualification standards for an  
31 emergency employee shall be determined by the city. The  
32 frequency of appointment, length of employment, and the  
33 circumstances appropriate for the appointment of firms or  
34 individuals under emergency appointments shall be restricted so  
35 as to prevent the use of emergency appointments to circumvent the  
36 regular or ordinary hiring process.

37 (6) The contractor will provide equipment, materials, facilities,  
38 or support services that could not feasibly be provided by the city  
39 in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the city's regular or ordinary hiring process would frustrate their very purpose.

~~(e)~~

(d) (1) Except as provided in paragraph (2), this section shall apply to all cities, including cities that have adopted a merit or civil service system.

(2) This section does not apply to a charter city formed pursuant to Section 3 of Article XI of the California Constitution.

~~(d)~~

(e) (1) This section does not apply to any contract for services described in Section 4525 or Section 4529.10.

(2) This section does not apply to a contract for public transit services, including paratransit services, in which the city is the grantee or subgrantee of Federal Transit Administration assistance and the city is thereby subject to the guidelines established in FTA Circular 4220 1D or any subsequent guidelines or revisions issued by the Federal Transit Administration.

~~(e)~~

(f) Notwithstanding any other provision of law, if any contract for transit services is not renewed because of the standards set forth in this section, and if the city commences to perform transit services that were provided by the former contractor, all of the following apply:

(1) The city shall offer employment, on a preferential basis, to any qualified former employee of the former contractor to perform the same job functions as performed on behalf of the former contractor.

(2) If, at any time, the city determines that fewer employees are required to perform the transit services than the number of employees that were required to perform those services under the former contract, the city shall offer preferential employment to the employees of the former contractor based on seniority.

(3) (A) If the employees of the former contractor were represented by an exclusive bargaining representative and if transit services, or services similar to the transit services performed by the former contractor, are also performed by employees of the city, the employees of the former contractor shall be placed in the appropriate city bargaining unit.

1 (B) In the event there is not an appropriate city bargaining unit  
2 for the employees of the former contractor, the city shall recognize  
3 and bargain with the exclusive representative of the employees of  
4 the former contractor.

5 ~~(f)~~

6 (g) This section shall apply to contracts for services entered  
7 into after ~~January 1, 2004~~, *July 1, 2005*. This section does not apply  
8 to the renewal of contracts for services subsequent to ~~January 1,~~  
9 ~~2004~~, *July 1, 2005*, where the contract was entered into before  
10 ~~January 1, 2004~~, *July 1, 2005*, irrespective of whether the contract  
11 is renewed, modified, or rebid with the existing contractor or with  
12 a new contractor.

13 SEC. 3. Notwithstanding Section 17610 of the Government  
14 Code, if the Commission on State Mandates determines that this  
15 act contains costs mandated by the state, reimbursement to local  
16 agencies and school districts for those costs shall be made pursuant  
17 to Part 7 (commencing with Section 17500) of Division 4 of Title  
18 2 of the Government Code. If the statewide cost of the claim for  
19 reimbursement does not exceed one million dollars (\$1,000,000),  
20 reimbursement shall be made from the State Mandates Claims  
21 Fund.

